

### **REMARKS**

These remarks are responsive to the Office Action mailed January 19, 2011 ("Office Action"). The Office Action has been received and carefully considered. Reconsideration of the current objections/rejections in the present application is also respectfully requested based on the following remarks. Claims 2-8, 12-14, 27-34, 36, and 37 are currently pending in the present application. All of the claims stand rejected. The claims have been amended as indicated above. Claims have been cancelled as indicated above without waiver or disclaimer. No new matter has been added. Reconsideration of the current rejections in the present application is respectfully requested based on the following remarks.<sup>1</sup>

Applicants thank the Examiner for the comments regarding the previous response. Applicants respectfully disagree with the Examiner's position however.

### **The Claims Are Allowable Over Ball**

The Office Action rejects claims 2, 3, 5, 8, 10, 12, 14, 27-29, 31, 34-35, and 37 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Pat. Pub. No. 2002/0050493 to Ball et al. ("Ball"). Additionally, the Office Action rejects claims 4, 6-7, 30, 32, and 33 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ball and claims 13 and 25 as allegedly being unpatentable over Ball in view of U.S. Patent No. 6,082,944 to Bachmann, et al. ("Bachmann").

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<sup>1</sup> As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions made by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such in the future.

*An Anticipatory Reference Must Disclose All Claim Limitations As Recited In The Claim*

It is well understood that for a proper anticipation rejection, all claim limitations must be taught or suggested by the prior art and the claim elements must be arranged or combined in the same way as recited in the claim . This baseline standard for anticipation under 35 U.S.C. §102, as held by the Federal Circuit in *Net Moneyin v. Verisign*, 88 USPQ2d 1751, 1759 (Fed. Cir. 2008), is:

We thus hold that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.

Furthermore, a “reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without *any* need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” *Sanofi-Synthelabo v. Apotex, Inc.*, 89 USPQ2d 1370, 1375 (Fed. Cir. 2008) (emphasis and alterations in original) (quoting *In re Arkley*, 172 USPQ 524 (CCPA 1972)). As such, Applicants respectfully submit that Ball fails to meet this standard and hence fails to anticipate the claimed embodiments.

*Independent Claims 2 and 27 Are Not Anticipated by Ball Since Ball Fails to Disclose the Recited Structure*

Applicants again note that the Office fails to focus on the distinction between a lid and a lid ring as claimed. When one of ordinary skill in the art reads the claim term “lever ring” (which Applicants note is a synonym for a “lid ring” as recited in claim 27), that person will read and understand that the inner portion is open and that a certain structure is denoted. Ball, in contrast discloses a **lid 16**. One of ordinary skill in the art would not make the lever ring or lid ring a starting point to potentially add another panel portion or equate it to the **lid 16** of Ball as

alleged by the Office. Indeed, the Office incorrectly names element 16 as “a lever ring” as recited at least in claim 2. *Id.* Ball clearly names element 16 as a *lid*. See, e.g., Ball, ¶ [0067].

The Office alleges that element 30 of Ball represents the “continuous flat web which radially outward merges into an edge rim (see Fig. 12)” as recited in claim 2. Office Action, p. 2. Ball discloses that element 30 is a “shallow frustoconical annular flange” that is “formed in the lid within the area of the flat upper surface 20, to surround and define the aperture 24 and to provide a seat for the closure member.” Ball, ¶ [0071]. In other words, element 30 surrounds an opening (aperture 24) onto which the closure member 28 is affixed. See Ball, Fig. 2a; ¶¶ [0072] and [0073]. Therefore, element 30 is not a “continuous flat web” as in the claimed embodiments.

While the Office notes that the opening is unclaimed, the opening is implied in the claims given the recited structure. Office Action, p. 11. As shown in Ball, for example in Figure 1, Ball discloses a partial opening (aperture 24) in the lid 16. Claim 2 however recites, *inter alia*, a “surrounding continuous flat web which radially outwardly merges into an edge rim of the lever ring, and a continuous surrounding groove extending between the edge rim and the flat web.” As understood in the art, a surrounding web and groove are fully surrounding with respect to the lever ring or lid ring. In contrast, Ball only shows an asymmetrically placed opening with element 30 (a shallow frustoconical annular flange) surrounding that opening only.

Further, Ball discloses an intermediate panel portion on its lid 16. This can best be seen in Ball Figures 2a, 12, 15, and 21 (see, e.g., substantially planar upper surface 164). Even if Ball’s shallow frustoconical annular flange 30 is assumed to be equivalent to the claimed flat web (which Applicants do not concede that it is); element 30 merges into this intermediate panel. Hence Ball’s countersink 162 (which the Office appears to be equating to the claimed groove) is

attached to this intermediate panel and not to element 30. Therefore, Ball's structure is different from the recited structure which has a "surrounding groove" that extends "between the edge rim and the flat web." The claimed flat web therefore emerges directly from the surrounding groove and has no intermediate panel portion as would be understood by one of ordinary skill in the art.

Claim 2 further recites, as amended, *inter alia*, "the inner curling is configured to deflect the closure layer so that an edge strip is formed that extends at an angle differing from zero with respect to a plane of the closure layer in the inner space of the lever ring." Ball fails to disclose this element. This amendment is based upon former dependent claim 10. Claim 27 has been amended in a similar fashion using the elements based upon former dependent claim 35.

In rejecting claim 10, for example, the Office relies upon Figure 12 of Ball as allegedly disclosing this element. However, Figure 12 fails to disclose this element as can be seen from a review of the figure. While Ball discloses bead 36 having a reverse curl (Ball, ¶ [0072]), the purpose of the bead 36 is to prevent injury to drinkers and to prevent damage to the closure member 28 by cut metal. *See also* Ball, ¶ [0094]. Accordingly, Ball fails to disclose the disclosed structural interface between the closure layer and the inner curling, specifically the recited "deflection so that an edge strip is formed."

In order to maintain an anticipatory rejection under 35 U.S.C. §102, a reference must teach each and every element of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference). "The identical invention must be shown in as complete detail as is contained in the . . . claim." MPEP § 2131 (quoting *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Therefore, in view of the preceding remarks, the Examiner has failed to present a

*prima facie* case of anticipation for at least independent claims 2 and 27 and Applicants respectfully request the withdrawal of the anticipation rejection.

*The Dependent Claims Are Allowable Over the Cited Art*

Dependent claims 3-8, 10, 12, and 14 are dependent on independent claim 2. As such, these claims include all of the limitations of independent claim 2. Further, Ball fails to teach or suggest any of the additional recitations of the dependent claims 3-8, 10, 12, and 14. Claim 10 has been cancelled rendering the rejection thereof as moot. Regarding claim 13, the addition of Bachmann fails to cure the deficiencies of Ball as noted above. Accordingly, these claims are allowable for at least the reasons discussed above with respect to independent claim 2. Additionally, these claims recite additional features which are neither taught nor disclosed by Ball. Likewise, though differing in scope, dependent claims 28-37, which depend from independent claim 27, recite similar elements and are allowable for at least the same reasons as dependent claims 3-8, 10, 12, and 14. Claim 35 has been cancelled rendering the rejection thereof moot.

Applicants respectfully request the withdrawal of the anticipation and obviousness rejections of claims 3-8, 10, 12, 14, 13, and 28-37.

*The Claims Are Allowable*

Applicants respectfully submit that all pending rejections have been overcome and the withdrawal thereof is respectfully requested. Therefore, Applicants submit that all claims are in a condition for allowance and indication thereof is respectfully requested.

**CONCLUSION**

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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